Office-Supreme Court, U.S.
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JAN 12 1981
ALEXANDER L. STEVAS,
CLERK

NO. 80-1273

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1980

JOE H. MCILROY

& JOHN ROLLINS

VS.

THE STATE OF TEXAS

On Writ of Certiorari to the the Court of Criminal Appeals of the State of Texas

PETITION FOR WRIT OF CERTIORARI

Robert E. Barfield
Attorney for Petitioners
906 Inland Oil Building
Amarillo, Texas 79101

Robert Huttash
State Prosecuting Atty.
P.O. Box 12308
Austin, Texas 78711
Attorney for Respondent

(a) QUESTIONS PRESENTED FOR REVIEW

QUESTION ONE: Whether the forfeiture of the bail bond herein for failure of Defendant, John Rollins, (One of the petitioners herein) herein to appear for trial, coming only five days after indictment, deprived petitioners of their property without due process of law in violation of Amendment XIV of the Constitution of the United States in that defendant's court-appointed attorney had inadequate time in which to prepare for trial?

QUESTION TWO: Whether petitioners were deprived of their property without due process of law in violation of the 14th Amendment to the United States Constitution in that Defendant was not allowed ten days in which to file written defensive pleadings as required by Texas Law?

(b) LIST OF PARTIES:

John Rollins, Petitioner

Joe H. McIlroy, Petitioner

The State of Texas, Respondent

Bobby Wynne, (Was a co-appellant in the Texas Court of Criminal Appeals, but abandoned his appeal, and is not a party to this petition.)

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TABLE OF AUTHORITIES

CONSTITUTIONS & STATUTES:

United States Code Service, Lawyer's Edition, Amendments, 5-End, Constitution U.S.C.S. p.444 9,18

Texas Code of Criminal Procedure, Article 26.04, Acts 1965, Chapter 722, p.425, Venon's Texas Statutes Annotated, Code of Criminal Procedure, Vol 2, p.266 10,20

Texas Code of Criminal Procedure, Art. 27.11, Acts 1965, Chapt. 722, p.430, Vernon's Texas Statutes Annotated, CCP., Vol2, p.328 10,23

CASES:

Johnson v. Zerbst, 304 U.S.456 82 L.Ed.1461 23,24

Schact v. U.S., 398 U.S. 58 8

State, Ex rel. Vance, v. Routt 571, S.W. 2d 903, 906 20

(d) The decision in this case below has not been reported in any official or unofficial reports to the date of this writing.

(e) GROUNDS OF JURISDICTION OF THIS COURT

(i) The judgment of the Court of Criminal Appeals of the State of Texas herein was made and entered on July 16, 1980.

(ii)The Court of Criminal Appeals of Texas entered an order on September 17, 1980, in which it "denied Leave to File" the appellant's Motion for Rehearing. (Petitioners contend that they had an absolute right to file their Motion for Rehearing under the applicable Texas Practice Rules.) (Attachment "B", Appendix)

PETITIONERS' PLEA FOR WAIVER OF TIMELY FILING OF PETITION

The within petition is filed after the time allowed by the current rules of This Court because of a misunderstanding of the rules by petitioners' counsel.

Petitioners urge the Court to waive the requirements of Rule 20.1 that the petition herein be filed within sixty days after the entry of judgment for the following reasons:

(a) Neither petitioners nor their attorney have heretofore prosecuted any kind of action before this Honorable Court. In order to prosecute a petition for writ of certiorari herein, it was first necessary that petitioners' attorney obtain admission to the Bar of the Supreme Court, a process which required several weeks in itself.

(b) Because of his previous total inexperience before this Court, petitioners' attorney made a careful study of the Rules of this Court to determine what acts and procedures were necessary in order to perfect the petition herein. The Attorney carefully

determined that the rules required that a petition for certiorari be filed within ninety days after judgment pursuant to Rule 22(1). Attorney further checked the 1980 Pocket Part of his Rule Volume to determine if said rule was still current, and found no changes therein. He therefore concluded that he had until December 16, 1980 to file his petition.

(c) On December 9, 1980 petitioners' attorney called the office of the Clerk of this Court concerning the proper form for the petition. At that time he was advised that a general revision of the Rules had become effective June 30, 1980. He then referred to a supplementary pamphlet to the U.S. Code Service, dated September, 1980, and found the latest rules. While studying same, primarily to determine the proper form for the petition, he discovered for the first time new Rule 20.1,

By said new rule the allowable time for filing had been shortened from 90 to 60 days.

(d) At the time he first became aware of the aforesaid new requirement, attorney had already drafted and typed his petition for certiorari so that the same could easily have been filed within the previously required 90 day period.

(e) Immediately upon becoming aware of the new rule attorney drafted and mailed a motion seeking an extension of time. Said motion was received by the Clerk on Dec. 15, 1980, but was returned to attorney as being out-of-time. Attorney was later advised by a deputy Clerk that he should incorporate his reasons for late filing herein.

Under authority of Schact v. U.S., 398 U.S.58 petitioners respectfully pray the Court to waive the requirements of Rule 20.1 herein.

(iv) Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

(f) Constitutional and Statutory Provisions Involved:

(1) Amendment XIV of the United States Constitution, Section 1:

"1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

United States Code Service, Lawyers' Edition, Amendments 5-End, Constitution

U.S.C.S., p.444

(2) Article 26.04 (b) of the Texas Code of Criminal Procedure:

"(b) The appointed counsel is entitled to ten days to prepare for trial, but may waive the time by written notice, signed by counsel and the accused."

Texas Code of Criminal Procedure, Acts 1965, Chapter 722, p.425, Vernon's Texas Statutes Annotated, Code of Criminal Procedure, Vol 2, p.266

(3) Article 27.11 of the Texas Code of Criminal Procedure:

"Article 27.11 Ten days allowed for filing pleadings

In all cases the defendant shall be allowed ten entire days, exclusive of all fractions of a day after his arrest, and during the term of court, to file written pleadings."

Texas Code of Criminal Procedure, Acts

1965, Chapter 722, p. 430, Vernon's Texas Statutes Annotated, Code of Criminal Procedure, Vol. 2, p. 328.

(g) Statement of the Case:

This is a case involving forfeiture of a bail bond. Petitioner, Joe H. McIlroy, was a co-surety on an appearance bond written for petitioner, John Rollins, as defendant and principal, in the principal sum of $20,000.00, and dated January 2, 1979. An indictment bearing the docket No. 18937 was returned against defendant, Rollins, on January 25, 1979 in the 181st District Court of Potter County, Texas, and immediately thereafter transferred to the 251st District Court of Potter County, Texas.

A judgment nisi was signed by Judge Naomi Harney of the 251st District Court of Potter County declaring a forfeiture of $20,000.00 against John Rollins, the

principal on the bond, and the sum of $19,000.00 against the sureties on the bond. No date of rendition was shown on the said judgment, but it recited that: "On the 30th day of January, 1979 this cause was called for trial---but the defendant failed to appear.--" The said judgment bears a clerk's filing stamp dated January 30, 1979. In its final paragraph the said judgment nisi rendered judgment against John Rollins as principal and against Joe H. McIlroy and Bobby Wynne as sureties in the principal sum of $20,000.00.

Scire facias was thereafter served on Joe H. McIlroy and Bobby Wynne as sureties and John Rollins as principal. The case came on the be heard on June 4, 1979 in the 251st District Court. At the said hearing the State of Texas introduced its "Exhibit 1" which consisted of the above-described judgment nisi and the

above-described citations (scire facias), and the above-described bond. The said documents were admitted without objection, and the State immediately thereafter rested its case.

The suretys' evidence showed that, at the time of the final trial on June 4, 1979, John Rollins was incarcerated in the Potter County Jail awaiting trial on another charge, and that the charge on which the instant bond forfeiture was based had been dismissed on motion of the State

The suretys' evidence further showed that surety Bobby Wynne had incurred expenses in an attempt to locate John Rollins. At the conclusion of all the evidence the court rendered judgment against John Rollins for $20,000.00, and against the suretys for $19,000.00, remitting the sum of $1000.00 in favor of the sureties in consideration of the

showing of work and expense by surety, Bobby Wynne.

The court's docket sheet showed that the only counsel that ever appeared of record for defendant, Rollins, was Doyce Mallett, who was appointed by the court to represent defendant on March 15, 1979.

(h) The first question herein was first raised by assignment of error in the Brief of Appellant, Joe H. McIlroy, (One of the petitioner's herein) to the Texas Court of Criminal Appeals, the same being raised by Point of Error No. Six therein, and being stated as follows:

> "The court erred in rendering judgment nisi on January 30, 1979 for the reason that the defendant could not have been legally forced to trial at said time because his court-appointed attorney (Tr.48) had not been given the required period of ten days in which to prepare for trial."

This contention by petitioner was overruled by the decision of the Texas Court of Criminal Appeals rendered July 16, 1980, (Paragraph beginning at the bottom of the third page of the said opinion and concluding on the 4th page of same.)

The second question herein was first raised by assignment of error in the Brief of Appellant, Joe H. McIlroy, to the Texas Court of Criminal Appeals, the same being raised by Point of Error No. Seven therein, and being stated as follows:

> " The court erred in rendering judgment nisi on January 30, 1979 for the reason that defendant could not legally have been forced to trial on that date in that he had not been given the required ten days in which to file defensive pleadings."

This question was decided adversely to petitioner by the opinion of the Texas Court of Criminal Appeals rendered on

July 16, 1980, by the last sentence of the first (full)paragraph beginning on p.4 of the said opinion, wherein the court said:

"we overrule this contention."

(i) A copy of the opinion of the Texas Court of Criminal Appeals rendered July 16, 1980 is hereto attached, marked Attachments A-1 through A-3.

(ii) N/A.

(iii) The opinion to which reference is made in Paragraph (i) above is, in effect, the judgment sought to be reviewed, in that same, on the last line of same (p.5) says:

"The judgment is affirmed."

A copy of the order by which the court purported to "deny leave to file" Appellant's Motion for Rehearing is hereto attached, marked Attachment "B".

(i) N/A.

(j)

ARGUMENT

All of the questions presented herein involve fundamental constitutional rights and principles. As far as appellants' counsel has been able to determine, the exact said questions have not been heretofore determined by this Court, but the judgment of the State Court herein was not in accord with applicable decisions and opinions of this Court, which are applicable by reasonable analogy to the situations herein. Petitioners were thereby deprived of their property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

The authorities which petitioners

will cite herein all present cases which involved a direct deprivation of the parties' liberty without due process of law. While the within case involves a deprivation of property rather than liberty we believe the applicable constitutional principles are exactly analagous. That such principles are analagous and equally within the purview of the protections of the Constitution is strongly suggested by the "due process clause" of the Constitution itself, as follows:

> " ---nor shall any State deprive any person of life, liberty, or property without due process of law.---" U.S. Constitution, Amendment XIV 1.,U.S. Code Service, L.E. Amendments 5-End, Constitution, U.S. C.S. p.444

This wording shows clearly that "property" is accorded equal dignity with "liberty" in the requirement of due

process. Indeed it is difficult for the writer to imagine any way in which a party could be deprived of his property without incidentally being deprived of his liberty to some extent.

QUESTION ONE

This question involves the fundamental right of an indigent defendant to the effective assistance of counsel, and adequate time for such counsel properly to prepare such defense. Admittedly the within case involves a forfeiture of a bail bond rather than a direct deprivation of liberty. The courts of the State of Texas, however, have always regarded and treated bail bond forfeitures as an integral part of the criminal prosecution to which they are ancillary. As to this see:

> "(3) Prior decisions of this Court and the Supreme Court leave no doubt that a bond forfeiture proceeding is "criminal in nature", citing:

Glenn v. State, 155 Tex. Cr. R.498, 236 S.W.2d 809, et al., State, Ex rel. Vance v. Routt, 571 S.W.2d 903,906

Petitioners' basic contention in this regard is that due process of law required that the defendant's court-appointed attorney be given ten days in which to prepare for any trial of the pending indictment. He is clearly given this right under the Texas Code of Criminal Procedure, which provides:

"Article 26.04

(b) The appointed counsel is entitled to ten days to prepare for trial, but may (e.a.) waive the time by written notice signed by the counsel and the accused."

The question of what constitutes "due process" is ordinarily a very complex and nebulous question, but fortunately, in this case, the question is answered very definitively by the above-quoted code section. Where a state has

by its own law defined what is due process as herein, said definition is controlling. As to this, see:

> "--Due process of law is process due according to the law of the land. This process in the states is regulated by the law of the state.-"

There seems therefore no doubt that the defendant was not accorded due process herein. The Texas Court of Criminal Appeals has attempted to dismiss this point in the third par. of the third page of its opinion by suggesting that

> "The record does not show the nature of the proceeding which the principal did not attend".

This suggestion, however, is clearly erroneous in that the very judgment appealed from clearly shows on its face that the grounds of forfeiture was that the defendant did not appear when the case was called for "trial". (Copy of said judgment hereto atached, marked (Exhibit "C".)

The said court further suggests, that the failure to allow the appointed attorney ten days in which to prepare for trial as required may not have been erroneous because the defendant may not have had an attorney at that time.)Opinion, Attachment A-2, p.3, last three lines.) It would certainly seem, however, that this failure, if in fact it did occur, would be even more reason for holding that the indigent defendant was denied due process, the defendant's right to effective representation being the most fundamental of all elements of due process, as to this see:

> "The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of the trial court.---This protecting duty imposes the serioud and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver of the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropri-

ate for that determination to appear upon the record." Johnson v. Zerbst, 304 U.S. 456,466, 82 L.E. 1461

It is apparent from the above that a waiver of fundamental constitutional rights to due process should not be presumed as the court did in this case.

SECOND QUESTION

The principles involved in the determination of this question are essentially the same as those involved in the first question. Again the defendant was not allowed ten days in which to file defensive pleadings as required by Article 27.11 of the Texas Code of Criminal Procedure , the said article being as follows:

> "In all cases the defendant shall be allowed ten entire days exclusive of all fractions of a day after his arrest, and during the term of the court, to file written pleadings."

The record herein reflects that the indictment herein was returned on January 25, 1979, only five days prior to the date on which the case was called for trial.

(See: Attachment "D", Appendix hereto) The record herein does now show a waiver of this right as required by Johnson v. Zerbst, 304 U.S. 456, 465, 82 L.E. 1461, 1467.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED:

Robert E. Barfield

Robert E. Barfield
Attorney for Petitioners
906 Inland Oil Building
Amarillo, Texas 79101

CERTIFICATE OF SERVICE

I, Robert E. Barfield, Attorney for Petitioners, hereby certify that I have this date served upon the Defendant, State of Texas, a true copy of the above and foregoing petition, by mailing a copy of same to its Attorney of Record, Hon. Robert Huttash, State Prosecuting Attorney, at his office address: P.O. Box 12308, Austin, Texas 78711.

This _____day of _____, 1981.

_____
Attorney for Petitioners

filed 1/12/81

NO. 80-1273

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1980

JOE H. MCILROY

& JOHN ROLLINS

VS.

THE STATE OF TEXAS

APPENDIX

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JOE H. McILROY, ET AL, Appellants

NO. 62,899 VS. - - - Appeal From POTTER County

THE STATE OF TEXAS, Appelle

OPINION

This is an appeal from a bond forfeiture proceeding. Appelland McIlroy was a co-surety on an appearance bond with Bobby Wynne for one John Winston Rollins who was charged with the felony offense of forgery. The appearance bond in question was signed on January 2, 1979. On January 30, 1979 the bond was declared forfeited by judgment nisi. Writs of scire facias were thereafter served on the sureties and upon John Rollins. The judgment was declared final on June 6, 1979.

In his first ground of error, appellant contends that the trial court erred in entering final judgment because the evidence was insufficient to show a violation of the terms and conditions of the

ATTACHMENT A-1

APPENDIX -1

bond for the reason that the principal, John Rollins, "was required to appear 'at the next term of said court,' and the 'next term' of the court in which forfeiture was rendered had not yet begun at the time of the rendition of the judgment nisi herein."

Appellant's point is not well taken. Whatever may be the effect of a condition which requires the appearance of a defendant at "the next term" of the district court, is was also a condition of his bond that appellant "make personal appearance at any time when, and place where, (appellant's) presence may be required under the code or by any court or magistrate ...." Accordingly, there is no merit to appellant's contention that the evidence supporting the forfeiture of his bond was insufficient on the ground that bond "required only that (he) appear 'at the next term of said court' and the 'next term' of the court in which forfeiture was rendered had not yet begun...." Appellant's first ground of error is without merit and is overruled.

ATTACHMENT A-1

APPENDIX -2

In his second and third grounds of error, appellants suggest that there was no evidence or that the evidence was insufficient "to show that the cases in which the bond was forfeited were the same cases for which the bond was made in that the bond signed by Joe H. McIlroy and Bobby Wynne as sureties showed on its face that it was made in a case bearing the district court docket number 11475, and naming John Winston Rollins as defendant, whereas the cases upon which the judgment nisi and final judgment for forfeiture were rendered to 'John (NMN) Rollins' as defendant, and bore the district court's docket's number 18,937C and 364-C. Further the judgment nisi did not allege that the sureties had signed a bond to guarantee the appearance of John Rollins at any time or place, but instead alleged that the sureties had made a bond to guarantee the appearance of one John Williams."

The record reflect that the bond was entered into on January 2, 1979, subsequent to the filing of a complaint against the principal defendant Rollins.

ATTACHMENT A-1

APPENDIX -3

The indictment, however, was not returned until January 25, 1979 thus the variance between a pre-indictment docket number and the number under which the cause was docketed after indictment is not significant. Appellant was required, by the terms of the bond, to insure the presence of the principal, Rollins, at "any and all subsequent proceedings." Appellant's contention that there was no evidence to support the bond forfeiture is without merit.

Appellant also suggests that the evidence was insufficient to support the bond forfeiture. Appellant makes much of the recitation in the judgment nisi that "John Williams, as principal, had entered into a bond." It is abundantly clear that this recitation was a mere clerical error, since the same judgment nisi declared the bond forfeited for the failure of "John Rollins" to appear. Moreover, the judgment nisi was properly amended according to the terms of Article 22.12, V.A.C.C.P. Furthermore, the omission of the middle name or initials of the principal, Rollins, is not a variance and is of

no significance. Appellant's third ground of error is overruled.

Similarly, in his fourth ground of error, appellant argues that the trial court erred in rendering final judgment because the judgment nisi recited that "John Williams" as principal, had entered into a bail bond whereas the judgment nisi ordered a forfeiture of the bond for the failure of John Rollins to appear. There was no material variance in the judgment nisi, and if there was it was corrected by the amended judgment nisi which appears in this record. Article 22.12, V.A.C.C.P. See Le Mier v. State 489 S.W.2d 898, 899 (Tex.Cr.App. 1973). This ground of error is overruled.

In his fifth ground of error, appellant contends that there was a fatal variance between the pleading and the proof in that "the judgment nisi alleged a bond to answer 'upon a charge by indictment', thereas (sic) the bond entered in evidence herein did not make reference to any indictment, but instead

showed the defendant to be charged by 'complaint'." As we have previously pointed out, the principal was required to appear in response to "any and all subsequent proceedings." Accordingly, the bond was properly forfeited for failure to answer "upon a charge of indictment." Appellant's fifth ground of error is overruled.

In his sixth ground of error, appellant contends that judgment nisi was entered erroneously "for the reason that the defendant could not have been legally forced to trial at said time because his court-appointed attorney had not been given the required period of ten days in which to prepare for trial." The terms of the bond required the principal's appearance at any and all proceedings. The record does not show the nature of the proceeding which the principal did not attend. Moreover, there was no showing that an attorney had been appointed for him at that time. Even had an attorney been appointed, the ten-day preparation period could have been waived. We are unwilling to indulge in speculation as to why the principal was required to

appear. We reaffirm the rule that the judgment nisi is prima facie proof that the statutory requirements concerning bond forfeiture have been met. There is nothing in the record which lends support to appellant's contentions to the contrary. This ground is overruled.

In his seventh ground of error, appellant suggests that the trial court erred in rendering judgment nisi because the principal could not have been legally forced to trial on the date upon which the judgment nisi was entered for the reason that he had not been given 10 days in which to file defensive pleadings. For the reasons outlined in our treatment of his previous ground of error, we overrule this contention.

Finally, appellant contends that the trial court erred in rendering judgment of forfeiture against the sureties in the sum of $19,000 "in that said judgment was excessive in amount under the circumstances and conditions shown by the evidence." Appellant concedes that the power of remittitur is discretionary

in the trial court. Article 22.16, V.A.C.C.P. It was shown that the co-surety Wynne had made efforts to locate the principal and had incurred expenses in this effort. The remittitur of $1,000 was sufficient to compensate him for these efforts. No abuse of discretion is shown. See Fernandez v. State, 516 S.W. 2d 677, 679 (Tex.Cr. App. 1974). This ground of error is overruled.

In a supplemental brief, appellant again contends that there was a failure of proof to support the bond forfeiture because "the State's own evidence showed affirmatively that the cases were different." Appellant also renews his contention that the discrepancy in names in the judgment nisi constituted a fatal variance. We have examined the cases cited to us by appellant in support of these contentions and we remain convinced that our original disposition of the grounds of error for which he has cited them is correct.

ATTACHMENT A-1

APPENDIX -8

The judgment is affirmed.

PER CURIAM

DELIVERED: July 16, 1980

BY: Panel 2, 1st Quarter, 1980

COMPOSED OF: Leon Douglas, Judge
Truman Roberts, Judge
Sam Houston Clinton, Judge

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ATTACHMENT A-1

APPENDIX -9

COURT OF CRIMIANL APPEALS OF TEXAS

CLERK'S OFFICE

Austin, Texas, September 17- 1980

Dear Sir:

I have been instructed to advise that the Court has this day denied "Leave To File" the appellant's Motion for Rehearing in Cause No. 62,899 , John Rollins

vs.

THE STATE OF TEXAS Appellee.

Sincerely yours, Thomas Lowe

Clerk

ATTACHMENT "B"

APPENDIX -10

CIVIL NO. 364C
CRIM. NO. 18937C

THE STATE OF TEXAS § IN THE 251st DISTRICT COURT

VS. § IN AND FOR

JOHN ROLLINS § POTTER COUNTY, TEXAS

FINAL JUDGMENT DECLARING FORFEITURE

On the 4th day of June, 197 9, the above entitled and numbered cause, wherein the State of Texas is plaintiff and John Rollins as principal, and Bobby Wynne and Joe H. McIlroy as (sxxxxx (sureties) on the bail bond of John Rollins are defendants, came on to be heard, and whereupon came the State of Texas by her Assistant District Attorney, and came the defendant (xxxxxx) (Sureties) by XXXX (their) attorney of record, Thomas Kendrick and it appearing to the Court after consideration of the pleadings and the evidence herein that no sufficient reason is shown why the defendant, John Rollins, did not appear in this court on the 30th day of January, 197 79, to answer the State of Texas on a charge by indictment herein filed

ATTACHMENT "C"

APPENDIX -11

and then and there pending accusing him of the offense of a felony, and that the Judgment Nisi heretofore rendered herein against the said defendants, should be made final.

It further appearing to the Court that the surety had incurred considerable expense in attempts to locate and return John Rollins to this Court, and that Bobby Wynne and Joe H. McIlroy (xxxxx (sureties) should be allowed credit on these expenditures in the amount of One-Thousand (1000.00).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the State of Texas do have and recover of the said John Rollins, as principal, the sum of Twenty-Thousand ($20,000.00) and costs of suit and in like manner do have and recover from the said Bobby Wynne and Joe H. McIlroy as xxxxx (sureties), the sum of Nineteen-Thousand ($19,000.00) and costs of suit, for all of which let execution issue.

ENTERED this the 6 day of June, A.D. 197 9.

/s/ Naomi Harney
Judge Presiding

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DEPUTY
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ATTACHMENT "C"

APPENDIX -12

In the Name and by the Authority of the State of Texas

THE GRAND JURORS for the County of Potter, State aforesaid, duly organized, impaneled and sworn as such at the JANUARY Term, A.D., 19 79, of the District Court of the 181ST Judicial District, in and for said County, upon their oaths in said Court present that JOHN ROLLINS hereinafter called defendant on or about the 11th day of May, A.D., 19 78, and anterior to the presentment of this Indictment, in the County of Potter and State of Texas, did then and there knowingly and intentionally, with intent to defraud and harm, forge, by making a writing, known to the defendant to be forged, as follows:

ATTACHMENT "D"

APPENDIX -13

NB NORTH STATE BANK

PLEASANT VALLEY SERVICES 1277
1404 E. ST. FRANCIS 383-6831 or 383-4205
AMARILLO, TEXAS 79108 88-2334
1113

May 12, 19 78

PAY
TO THE
ORDER OF ROLLINS, John $ 173.80

ONE HUNDRED & SEVENTYTHREE DOLLORS & EIGHTY CENTS-DOLLARS
BY ENDORSEMENT THIS CHECK WHEN PAID IN
FULL PAYMENT OF THE FOLLOWING ACCOUNT

/s/ Jesse Morrow Jr

':1113::: 2334: '07 891 3 01 00000 17380

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POTTER COUNTY TEXAS
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BILLIE NANCE HILL

against the peace and dignity of the state.

/s/ Don Lamb
Foreman of the Grand Jury.

ATTACHMENT "D"

APPENDIX -14

THE STATE OF TEXAS §
COUNTY OF POTTER §

I, _____ Clerk of the District Court of _____ County, Texas, do hereby certify that the within and foregoing is a true and correct copy of the Original Bill of Indictment, filed in said court on the _____ day of _____A.D., 19 ___, in Cause No. _____ styled The State of Texas, vs. _____ _____.

Given under my hand and seal of said Court, at office in _____ this _____ day Of _____ A.D., 19 _____.

By:_____Clerk

_____Deputy

ATTACHMENT "D"

APPENDIX -15

NO. 18937C

THE STATE OF TEXAS

vs.

JOHN ROLLINS

I N D I C T M E N T

Offense:
Forgery

_____, Attorney

A TRUE BILL

/s/ Don Lamb
Foreman of the Grand Jury

Filed on the 25th day of January, 19 79

/s/ Billie Nance Hill
Clerk of District Court.

/s/ Linda Haley Deputy

Amount of Bail, $_____

ATTACHMENT "D"

APPENDIX -16